

AN ORDINANCE AMENDING CHAPTER 20, POLICE, OF THE CODE OF THE CITY OF
SALISBURY, RELATING TO YOUTH PROTECTION AND CURFEW

Be it ordained by the City Council of the City of Salisbury, North Carolina, as follows:

SECTION 1. That Section 20 of the Code of the City of Salisbury be amended to add the following:

ARTICLE IV – YOUTH PROTECTION

Section 20-150. Purpose

The purpose of this chapter is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of 16 years in the City of Salisbury. The youth protection ordinance is intended to reinforce and promote the role of the parent in raising and guiding children, and promote the health, safety, and welfare of both juveniles and adults by creating an environment offering better protection and security for all concerned.

Section 20-151. Definitions

For the purpose of this chapter, the following words and phrases shall have the following meanings:

Direct Route – The shortest, reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

Emergency – An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also shall include any action that is reasonably necessary in order to respond to the medical needs of a family member of the juvenile regardless of whether the juvenile's action is taken in order to prevent death or serious bodily injury.

Establishment – Any privately owned place of business operated for profit to which the public has access or is invited, including but not limited to any place of amusement or entertainment.

Guardian – A person who is court-appointed to be the guardian of a juvenile.

Juvenile – Any person under the age of 16 years.

Owner/Operator – Any individual, firm, association, partnership or corporation, operating, managing, or conducting any establishment, including employees, members or partners of an association or partnership and the officers of a corporation.

Parent – A person who is a natural parent, adoptive parent, foster parent, or step-parent of another person, or a person to whom legal custody has been given by court order.

Public Place – Any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including but not limited to streets, sidewalks, highways, alleys, rights of way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, similar areas that are open to the public, and other common areas open to or accessible to the public.

Remain – To linger or stay in a public place, or to fail to leave the premises when requested to do so by a Police Officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or employee of the premises.

Restricted Hours – The time of night referred to herein as based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Savings Time, generally observed by the public in the City of Salisbury, North Carolina. Restricted hours shall mean:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

Section 20-152. Offenses

Except as provided by Section 20-153, the following offenses constitute a violation of this chapter:

- a) A juvenile commits an offense by being present in or remaining in any public or on the premises of any establishment with the city during the restricted hours
- b) A parent or guardian of a juvenile commits an offense if he or she knowingly permits, or by insufficient control, allows the juvenile to remain in any public place or on the premises or any establishment within the city during the restricted hours where the exceptions of Section 20-153 do not apply. The term “knowingly” includes knowledge that a parent should be reasonably expected to have concerning the whereabouts of a juvenile in that parent’s legal custody. This requirement is intended to hold neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- c) The owner, operator, or any employee of an establishment commits an offense if he/she knowingly allows a juvenile to remain upon the premises of the

establishment during the restricted hours where the exceptions of Section 20-153 do not apply. The term “knowingly” includes knowledge that an operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for “knowingly” shall be applied through an objective test; whether a reasonable person in the operator’s or employee’s position should have known that a patron was a juvenile in violation of this chapter.

- d) It shall be a violation of this chapter for any person 16 years of age or older to aid or abet a juvenile in the violation of division 20-152(a).
- e) It shall be a violation of this chapter for a parent or guardian to refuse to take custody during the restricted hours of a juvenile for whom the parent or guardian is responsible.

Section 20-153. Exceptions

A juvenile who is in a public place or establishment during the restricted hours shall not be in violation of this chapter if the juvenile is:

- a) Accompanied by his/her parent or guardian.
- b) Accompanied by an adult 18 years of age or older authorized by the parent or guardian of such juvenile to take the parent or guardian’s place in accompanying the juvenile for a designated period of time and purpose within a specified area.
- c) On an errand, using a direct route, at the direction of the juvenile’s parent or guardian until the hour of 12:30 a.m.
- d) In a motor vehicle with parental consent engaged in interstate travel through the city or originating or terminating in the city.
- e) Traveling in a motor vehicle with a parent or guardian, or traveling in a motor vehicle with an adult 18 years of age or older authorized by the parent or guardian of such juvenile to take the parent or guardian’s place on accompanying the juvenile for a designated period of time and purpose within a specified area.
- f) Engaged in a lawful employment activity, using a direct route to or from a place of employment.
- g) Reacting or responding to an emergency.
- h) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and sponsored by a public or private school, the City of Salisbury or other governmental entity, a civic organization, or another similar entity that accepts responsibility for the juvenile.
- i) Exercising First Amendment rights protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right to assembly.
- j) Married or emancipated
- k) When authorized, by special permit from the Chief of Police or his designee, carried on the person of the juvenile thus authorized as follows. When necessary nighttime activities of a juvenile may be inadequately provided for by other provisions of this chapter, then recourse may be had to the Chief of Police, or his designee, either for a regulation as provided in division 20-153(l) or for a special permit as the circumstances warrant. Upon the findings of reasonable necessity

for the use of a public place to the extent warranted by a written application signed by a juvenile, and by a parent of a juvenile, if feasible, stating (1) the name, age and address of the juvenile; (2) the name, address and telephone number of a parent thereof; (3) the height, weight, sex, color of eyes and hair and other physical characteristics of the juvenile; (4) the necessity that requires the juvenile to remain upon a public place during the restricted hours otherwise applicable; (5) the public place and; (6) the beginning and ending of the period of time involved by date and hour, the Chief of Police or his designee may grant a permit in writing for the juvenile's use of a public place at such hours as in the opinion of the Chief of Police may reasonably be necessary and consistent with the purposes of this chapter.

- 1) When authorized, by regulation issued by the Chief of Police or his designee in other similar cases of reasonable necessity, similarly handled as set forth in division 20-153(1) but adapted to reasonably necessary nighttime activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police or his designee permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as schools, and shall define the activity, the scope of the use of the public places permitted, the period of time involved not to extend more than one hour beyond the period of termination of this activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of this chapter.

Section 20-154. Defense

It is a defense to prosecution under section 20-152(c) that the owner, operator, or employee, of an establishment promptly notify the Salisbury Police Department that a juvenile was present on the premises of the establishment during the restricted hours and refused to leave.

Section 20-155. Enforcement

- (a) Before taking any enforcement action under this ordinance, a Police Officer shall ask the apparent offender's age and reason for being in the public place or establishment during the restricted hours.
- (b) The officer shall not prepare a juvenile contact report, file a complaint or take a juvenile into custody unless the officer reasonably believes that an offense has occurred and that based on any response and other circumstances, no exception or defense in Section 20-154 is present

Section 20-156. Penalties

- (a) A juvenile who violates any provision of this chapter is subject to being referred by complaint to the Department of Juvenile Justice and Delinquency Prevention (DJJDP)

subject to evaluation and determination of the need for court action as found in G.S. 7B-1702 and G.S. 7B-1703. The complaint may be closed with no further action after a meeting with the child and family, or diverted from court pursuant to G.S. 7B-1706 with a diversion plan or contract utilizing community resources, or the complaint may be approved and submitted as a petition for a court hearing. If the juvenile is found delinquent in a court hearing, the court may impose dispositional alternatives (found in G.S. 7B-2506) in accordance with the dispositional structure set forth in G.S. 7B-2508.

(b) Any person other than a juvenile who violated any provision of this chapter shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100, and imprisonment at the discretion of the court in accordance with N.C.G.S. 1-4.

Section 20-157. Severability

In any section, subsection, sentence, term, or exception of the Chapter, or any application thereof to any person or circumstance is adjudged to be unconstitutional or invalid; such adjudication shall not affect the validity of any remaining portion of this chapter or its application to any other person or circumstance. The City Council does not intend a result through the enforcement of this chapter that is absurd, impossible of execution or unreasonable. Council intends that the chapter be held inapplicable in such cases, in any, whether its application would be unconstitutional under the Constitution of the State of North Carolina or under the Constitution of the United States of America.

SECTION 2. That all ordinances, or the parts of ordinances in conflict with this ordinance, are hereby repealed to the extent of such conflict.

SECTION 3. That this Ordinance shall be effective upon adoption by the City of Salisbury from and after its passage.